IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Petition No.17968 of 1997

Pandyan Grama Bank,
rep. by its Chairman,
71, Kandapuram Street,
Virudhunagar-626 001. .. Petitioner

Vs.

1. The Presiding Officer,
   Industrial Tribunal - Tamil Nadu,
   Chennai.

2. S.Senthilnathan .. Respondents

Writ Petition filed under Article 226 of the Constitution, praying for the issuance of Writ of Certiorari to call for the records from the 1st respondent Industrial Tribunal and quash the award of the 1st respondent in I.D. No.109/93 dated 4.4.1997 and issue consequential directions and award costs.

For petitioner : Mr.N.G.R.Prasad

For Respondents : Mr.R.Arumugam for R2

O R D E R

This writ petition is filed to call for the records from the first respondent Industrial Tribunal and quash the award of the first respondent in I.D. No.109/93 and issue consequential directions and award costs.

2. The brief facts arising out of this writ petition are as under:-

The petitioner is a bank established by the Regional Rural Banks Act, 1976. The main object of the bank is to grant loans and advances to farmers, agricultural labourers who cannot approach the commercial banks in urban areas. The second respondent is the employee of the petitioner. The second respondent was initially working in Paramakudi Branch from 22.11.1983 to 21.01.1984 serving as Sweeper-cum-Messenger. He served as Sweeper-cum-Messenger in other branches, as follows:-

Kamankottai 22.01.1984 to 15.02.1987

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T.Maraiyur	16.02.1987 to 16.07.1988
Vayali	18.07.1988 to 30.08.1989

Totally he worked for 5 years and 9 months. While he was working in T.Maraiyur Branch, he was issued Charge Sheet dated 07.07.1988 on the following charges:-

a) he was involved in immoral activities and he misbehaved with a lady;
b) he had been absenting himself frequently thereby causing inconvenience to the bank and
c) he demanded an illegal gratification from the Sheep Loan Beneficiaries and obtained Rs.40/- from Ponnuswamy Thevar.

Departmental Enquiry was held and after enquiry, the Enquiry Officer found the second respondent guilty of the first two charges, namely, indulging in immoral activities and misbehaviour with a lady and frequently absenting himself from duty. The second respondent was exonerated of the third charge, namely, receiving illegal gratification. On the basis of the above finding, the Chairman of the Bank who was the Disciplinary Authority, terminated the second respondent from service by order dated 30.08.1989. Aggrieved by the order, the second respondent filed an appeal to the Board of Directors, the Appellate Authority and the same was dismissed on 18.05.1990. Aggrieved, the second respondent raised an Industrial Dispute in I.D. No.109 of 1993, which was referred to adjudication of the Presiding Officer, the above mentioned first respondent. After hearing the arguments, the Tribunal passed an award holding that the action of the Management of the Bank terminating the services of the second respondent, was not justified and the second respondent is entitled for reinstatement, continuity service, backwages and all other attendant benefits. Aggrieved by the same, the petitioner has preferred the present writ petition.

3. Learned counsel appearing for the petitioner submitted that the Tribunal was wrong in holding that there was no satisfactory evidence against the first Charge. Further the Tribunal was also wrong in misconstruing the decision of JAMAYAT as having been taken on 17.12.1988 whereas it was only an Extract Copy of the letter sent on 17.12.1988 and in that letter the date of the incident was mentioned as 12.05.1988. On this basis, the Tribunal had come to an erroneous conclusion that the evidence has been procured after the charge sheet, which is perverse. Further, it is also submitted that the Tribunal was wrong in holding that there is no eye witnesses examined in respect of the first charge. The Tribunal failed to see that Ramu, a Senior Asst-cum-Cashier gave evidence and he stated that he was present at the meeting of the JAMAYAT where the second respondent confessed to his misbehaviour with the lady. The Tribunal has overlooked this evidence. In respect of the second charge, the Tribunal had totally misconstrued the charge. Even if the employee had applied for medical leave and his leave had been regularised, that does

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not absolve the employee of informing the Bank about his absence, so that alternative arrangements could immediately be made. It is also further submitted that the Tribunal was wrong in holding that the charges framed are vague and general. Therefore, it is submitted that the award passed by the Tribunal is wrong, illegal, without basis and justification. It is also alternatively submitted that the second respondent is not entitled to the backwages as there is no evidence or material furnished that the second respondent was not employed during the relevant period.

4. Learned counsel appearing for the second respondent submitted that charges are vague and general. Further it is submitted that the finding of the Enquiry Officer was totally perverse and the enquiry conducted was not fair and proper. The Tribunal had considered all the relevant materials and the reasons are based on valid materials and evidence and hence the order of the Tribunal is in accordance with law. The issue involved also is a pure question of fact and hence the writ petition itself is liable to be dismissed.

5. Heard the counsel. The second respondent was working as Sweeper-cum-Messenger at T.Maraiyur Branch of the petitioner-Bank. On 07.07.1988, the Bank gave him a show cause notice-cum-charge on three grounds. On enquiry the Officer found the second respondent guilty of the first two charges only and in respect of the third charge, the second respondent was exonerated. The first two charges are as follows:-
a) he was involved in immoral activities and he misbehaved with a lady;
b) he had been absenting himself frequently thereby causing inconvenience to the bank and

The first charge is that the second respondent was involved in immoral activities and as a result of which the local Jamad evicted him from the village and his overnight stay at T.Maraiyur was prohibited thereby he damaged the image of the Bank among the public. The Jamath had sent a letter marked as Ex.M.17 on 17.12.88. The charge Ex.M.14 has been framed on 07.07.1988, whereas the complaint was given on 17.12.1988. Hence, it is evident that the complaint had been obtained after framing of the charge. However, the charge was for indulging in immoral activities whereas Ex.M.17 was for quarelling with the inmates of a house after having consumed liquor. Mere quarrelling with the inmates of a house could not be considered to be an immoral act. Also, there is no finding or evidence produced by the petitioner-Bank that he is addicted to liquor and causes nuisance to the public. Even for the said act of quarrelling with the inmates of the house after having consumed liquor by the second respondent, neither the members nor anybody else who witnessed the occurrence had been examined before the Enquiry Officer. Hence it is apparent that there are no witnesses. The Enquiry Officer merely relied on the letter of the Jamath. It is also seen from the finding of the Tribunal that originally three witnesses were proposed to be examined on the side of the petitioner-Management, but however, all the three witnesses were not examined during the enquiry. The two persons who were

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examined on the side of the petitioner-Management in the enquiry are Shri.A.Ramu, Senior Clerk-cum-Cashier and Shri.M.Soundara Nageswaran, Officer-in-charge of T.Maraiyur Branch of the petitioner-Bank. These two witnesses are only officials of the Bank and they had no personal knowledge of what had happened regarding the first charge framed against the second respondent. It is also factually found that the Enquiry Officer has not even stated the name with whom the second respondent had quarrelled on that date. Mere drinking and quarrelling with the inmates will definitely not amount to immoral activities and the counsel also has not produced any authority or case law to show that the stray incident of drinking and quarrelling with inmates will amount to immoral activities. The word "immoral" is defined in the Chambers Dictionary (New Edition) as follows:-

> "inconsistent with accepted moral principles or standards, wrong; evil, unscrupulous; sexually improper; promiscuous, licentious, dissolute"

P.Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, 2005 defines the word "immoral" as follows:-

> "Contrary to public welfare; against public morals; morally wrong or evil; dissolute.
> 'IMMORAL' as defined in the Standard Dictionary, is hostile to the welfare of the general public"

In the present case, there is no material or factual finding that the second respondent had the habit of drinking in public place or during the office hours. There is no clear finding whether the incident had taken place or not, or the second respondent is an addict to liquor. There is no eye witness in respect of the second respondent taking liquor as well as picking up quarrel with the neighbours. Whether it can be said that drinking occasionally or picking up quarrel amounts to immoral activities? The reasons and circumstances in which the quarrel occurred are not available on the records. There is also no evidence to show that the second respondent perpetually caused nuisance to the public. If the second respondent had perpetually caused nuisance to the public and indulged in drinking or taking drugs, then the first respondent would be right in stating that the second respondent had indulged in immoral activities. In this case, no material or evidence available on record to show how many incidents of drinking and quarrelling with the neighbours had occurred, causing public nuisance. Also there is no eye witnesses to any of these incidents. Hence the Tribunal is right in holding that a stray incident of drinking or quarrelling does not amount to immoral activities or moral turpitude. Drinking in a public place or during the office hours is morally wrong and evil. If a person drinks at his residence and causes no nuisance to neighbours or public, it cannot be said that he involves in immoral activities. The Tribunal had given a finding that there is no moral turpitude in the present case by relying on this Court judgment in the case of Management of Tractors & Farms Equipment Ltd. Vs. First Additional Labour Court, Madras and another, reported in 1982 II L.L.J. 403. In view of the factual finding both on law as well as the materials available on record, the Tribunal had come to

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a right conclusion that the first charge is a vague one and also holding that mere drinking and picking up quarrelling will not amount to immoral activities or moral turpitude.

6. The second charge is that the second respondent was habitually absenting himself from duty. Ex.M.1 to M.10, M.13, M.15, M.16 and M.18 are all documents filed to prove the habitual absence of the second respondent. Ex.M.18 pertains to unauthorised absence on various dates by the second respondent. It is seen from the records that except his overstay on 25.04.1988 on all other occasions the second respondent had sent leave letters and the same have been accepted by the Management. Also it is seen that his medical leave applications have been ratified by the management. The only grievance of the petitioner is that the second respondent had failed to inform his absence well in advance for getting permission of the authorities concerned. The medical leave is an exception and one cannot predict as to when one will fall sick. It is also seen from the records that most of the leave applications submitted by the second respondent were on urgent contingencies and therefore the reason of falling sick cannot be taken as habitual absence. Once the Bank considered the leave and the leave was sanctioned by the petitioner-Management, they cannot go back by accusing the employee, the second respondent, that he had been habitually absenting himself from duty. When the second respondent applied for medical leave, the same cannot be considered as habitual absence and there is bereft of particulars with regard to the second charge also. Hence the Tribunal is right in holding that the second charge is not proved.

7. In respect of the alternative argument advanced by the counsel for the petitioner, the petitioner-Bank has to pay backwages for the period from 30.08.1989 to 04.04.1997. The said backwages works out to approximately Rs.95,000/-. The second respondent, for all these years, could not have remained totally unemployed and also no evidence that he was gainfully employed. The counsel appearing for the second respondent also is not in a position to give details regarding the non-employment during the period. It is also not a matter of right to claim the backwages especially when he has not worked during the relevant period. Keeping in view the doctrine of "NO WORK NO PAY" and also in the interest of justice, it would be appropriate to award a consolidated sum of Rs.50,000/- (Rupees Fifty Thousand Only) towards backwages to the second respondent.

8. In view of the foregoing reasons, the order of award of the Tribunal is confirmed in respect of reinstatement, continuity of services and all other attendant benefits, except the backwages, which stands modified as above.

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9. The writ petition is disposed of with the above observations. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Presiding Officer,
Industrial Tribunal - Tamil Nadu,
Chennai.
+ One cc to Mr. N.G.R. Prasad, Advocate sR 22959
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